

ARTICLE 12792.2

DRUG-FREE WORKPLACE PROGRAM

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SUBARTICLE 1. GENERAL PROVISIONS

1-1. Background.

a. References. The requirement that all federal institutions develop a program to eliminate drug use/abuse in the workplace was established by Executive Order 12564 (15 Sep 1986) and Public Law 100-71 (11 Jul 1987). SECNAVINST 12792.3 (8 Dec 1988) outlined Navy policy and delegated responsibilities for implementing the Drug Free Workplace Program (DFWP). OPNAVINST 5355.4 (30 Nov 1989) implemented DFWP policy and procedures for all Navy activities. OCPMINST 12792.3A (10 Sep 1993), also known as CPI 792-3A, implemented the DFWP procedures for Navy civilian personnel and is the primary source of guidance for all Navy civilian DFWP procedures.

b. Department of the Navy Civilian Drug Program Coordinator. The coordinator for the Navy's DFWP is in the Office of the Deputy Assistant Secretary of the Navy (Civilian Personnel/EEO), Code DP 3, 800 North Quincy Street, Arlington, VA 22203-1998. Currently, Code DP 3 is Ms. Sheeler Kowalewski at 703-696-5893.

c. Contracting Officer's Technical Representative (COTR). The sole COTR for the Navy's DFWP is the Office of the Deputy Assistant Secretary of the Navy (Civilian Personnel/EEO), Code DP 3, 800 North Quincy Street, Arlington, VA 22203-1998.

d. Drug Program Coordinator (DPC).

(1) OCPMINST 12792.3A requires every command appoint their own DPC whether or not they have Testing Designated Positions (TDP). Activity heads/commanding officers are responsible for ensuring that their DPC and collection site personnel receive the training required to correctly administer the DFWP collection procedures required by the Department of Health and Human Services. Because of the sensitive nature of the information a DPC has access to (i.e. test results), **every DPC is required to attend formal training before he/she can act in an official capacity as a DPC.** This requirement is not waiveable. Training sessions are given twice a year in May and October. Commands not having a DPC may request that a DPC from another command act as their DPC until such time that their own DPC receives the required training. Commands should contact ODASN at 703-696-5893 for information on and to schedule DPC training.

(2) The DPC appointed by the command is responsible for all aspects of the DFWP outlined in the instructions referenced in subarticle 1, paragraph 1 - 1. DPCs are authorized to contact ODASN Code DP 3 directly with any questions regarding the DFWP.

(3) The DPC shall determine and maintain a list of personnel occupying positions designated as Testing Designated Positions (TDP). A listing of pay-plan/series and mandatory inclusions to the TDP list are in OCPMINST 12792.3A, appendix E. All personnel in a TDP are required to sign a 30 day letter. An example of a 30 day letter is in OCPMINST 12792.3A, Appendix D. The command DPC

will prepare and have personnel in a TDP sign a 30 day letter, maintain a file of 30 day letters, schedule all urinalysis tests and request collectors to perform urinalysis tests. The DPC is responsible to notify individuals of the results of testing and maintain all records pertaining to testing. More detailed instructions on DPC responsibilities are in OCPMINST 12792.3A.

(4) DPCs will schedule DFWP training and coordinate with other area DPCs on such matters as the annual Drug Awareness Week and compile the statistics required for the annual DFWP report which is due each year in October.

e. Collection Site Coordinator (CSC). Activity heads will designate a specific individual to serve as the CSC for testing and related DFWP matters for that activity. This is normally the DPC. If an activity has an agreement for another command's DPC to service their activity, the CSC is responsible for all DPC functions except for testing and reporting results. For testing purposes, the CSC is responsible to determine a suitable site for a random urinalysis and notify the immediate supervisor of each person scheduled to be tested of the place and time of the test.

SUBARTICLE 2. PROCEDURES

2-1. Action. The following paragraphs are intended to provide supplemental information and assist commands in implementing OCPMINST 12792.3A.

a. Testing Designated Positions (TDP). OCPMINST 12792.3A, Appendix E (CH - 1 & 2) lists specific pay-plan/series and mandatory inclusions that determine an activity's TDP list. Persons occupying positions with the exact pay-plan/series match or are a mandatory inclusion shall be issued a 30 day letter. A person who feels that their position does not meet the criteria for a TDP may request a waiver via their chain of command. The activity should consult with the DPC before removing any position from the activity's TDP. The activity head's decision to request a waiver of the requirement must be based on the strict application of the criteria in Appendix E. Drug testing cannot be waived for persons whose positions meet the criteria of Appendix E.

b. 30 Day Letter. The 30 day letter is notification from the activity head/commanding officer to a civilian employee that they are in a TDP. The letter lays out the basic tenets of the DFWP and informs the individual that they are subject to random testing 30 days from the date they sign the letter and that submitting to testing is a condition of employment. The command DPC, or CSC in the absence of a DPC, is responsible to prepare and have every person in a TDP sign a 30 day letter. The format for this letter is in OCPMINST 12792.3A, Appendix D. If an employee refuses to sign indicating receipt of a 30 day letter the DPC shall indicate this on the copy, print and sign their name on the copy and file it. CSCs should forward the original, signed 30 day letter to the servicing DPC and keep a copy. Refusal to sign will not affect a person's status as an employee designated for random drug testing.

c. Types of Tests.

(1) Accident/Unsafe Practice Test. If a supervisor or manager suspects that an employee, whether or not they are in a TDP, has caused or contributed to an on-the-job accident or unsafe, on-duty, job-related activity, he/she will gather all information, facts, and circumstances leading to and supporting a request for a drug test. To authorize an accident/unsafe practice test a death or injury requiring hospitalization or damage exceeding \$10,000 must have occurred. Supervisors referring an employee for testing based on an accident or unsafe work practice must get approval for such a test from the next higher level of supervision in accordance with OCPMINST 12792.3A, paragraph 12.b. The decision to conduct a test should be made the same day as the event or behavior occurred. The employee must be notified in writing by formal letter from the activity of its intent to conduct an accident/unsafe practice test. A sample of an accident/unsafe practice test notification is in Appendix F of OCPMINST 12792.3A. The DPC should be notified of the requirement for a drug test as soon as possible. It is the DPC's responsibility to arrange for a test once the proper documentation is received.

(2) Reasonable Suspicion Test. A test may be authorized when management has a reasonable suspicion that an employee in a TDP is using drugs illegally. This belief must be based on specific objective facts and reasonable inferences drawn from these facts. Reasonable suspicion may be drawn from observable phenomena (e.g., observed drug use, possession of drug paraphernalia), physical symptoms of drug use, arrest or conviction for an on- or off-duty drug related offense or information provided by a reliable and creditable source. "Hunches" or "rumors" are not sufficient to meet this standard. Also included is evidence that an employee tampered with a previous drug test and the temperature and/or color of a recent specimen indicates possible adulteration, tampering or substitution. The decision to conduct a test should be made the same day as the event or behavior occurred. The employee must be notified in writing by formal letter from the activity of its intent to conduct a reasonable suspicion test. A sample of a reasonable suspicion notification is in Appendix F of OCPMINST 12792.3A. The DPC should be notified of the requirement for a drug test as soon as possible. It is the DPC's responsibility to arrange for a test once the proper documentation is received.

(3) Random Drug Test. The DPC schedules, arranges for collectors and prepares the list of names for random testing. When notified that an employee under his/her supervision has been selected for a random drug test, the supervisor should not approve any leave or allow an employee to leave, even at the end of their shift, until the employee has completed a drug test. Supervisors are permitted to authorize overtime to complete a test. The supervisor is responsible to notify the employee of the place and time for the test. An employee's test will be reported as positive if the employee has been notified and does not show (and has no plausible reason) or refuses to be tested. The supervisor will follow the procedures outlined in the "Supervisor's Checklist" on random testing. The checklist is available from the DPC and is in OCPMINST 12792.3A, Appendix G.

(4) Voluntary Testing. Employees may volunteer to be included in the random testing pool by submitting a request in writing using the format in Appendix G of OPNAVINST 5355.4. A person who volunteers is subject to all of the testing regulations of a TDP. They will remain testable until their written request to be removed is approved by their activity head/commanding officer.

(5) Applicant Testing. Pre-employment testing is conducted on applicants whose positions have been determined to meet the criteria for random drug testing. Negative drug test results are required prior to being hired.

(6) Follow-up Testing. Should the activity decide to retain an employee after the first positive drug test, the employee is required to successfully complete rehabilitation through the Civilian Employee Assistance Program (CEAP). An additional requirement is for the employee to submit to random drug screening for a reasonable amount of time, normally twelve-months.

d. Safe Harbor. A provision of the Drug-Free Workplace Program gives an employee a one-time opportunity to voluntarily identify himself or herself as a user of illegal drugs willing to undergo counseling and, as necessary rehabilitation. "Safe Harbor" insulates the employee from discipline for these admitted, but otherwise unknown, past acts of illegal drug use. It does not protect the employee from discipline for admitting to drug trafficking or other drug-related offenses. Safe Harbor cannot be invoked once the employee has been randomly selected for a drug screen.

e. Positive Drug Test Results. The immediate supervisor must immediately remove a person from a TDP who has tested positive for drugs. In addition, the person must have their security clearance revoked and be referred to the Civilian Employee Assistance Program (CEAP). The immediate supervisor must also initiate disciplinary action, up to removal, against any employee who tests positive. Supervisors should consult with their Employee Relations Specialist for specific actions they may take.